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IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Sean W. Tucker

Confirmation No.: 1332

Application No.: 10/751,094

Examiner: R. M. Flandro

Filing Date: 01-02-2004

Group Art Unit: 3679

Title: SYSTEM AND METHOD FOR BI-DIRECTIONAL ACCESS TO A FASTENING DEVICE

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Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 02-01-2005.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

() (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

() one month	\$120.00
() two months	\$450.00
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() The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account **08-2025** the sum of \$500.00. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Respectfully submitted,

Sean W. Tucker

By Jerry L. Mahurin

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Docket No.: 10017979-3
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Sean W. Tucker

Application No.: 10/751,094

Confirmation No.: 1332

Filed: February 21, 2002

Art Unit: 3679

For: **SYSTEM AND METHOD FOR BI-
DIRECTIONAL ACCESS TO A FASTENING
DEVICE**

Examiner: R. M. Flandro

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under § 41.37(a), this brief is filed within two months of the Notice of Appeal filed in this case on February 1, 2005, and is in furtherance of said Notice of Appeal.

The fees required under § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

- | | |
|------|---|
| I. | Real Party In Interest |
| II | Related Appeals and Interferences |
| III. | Status of Claims |
| IV. | Status of Amendments |
| V. | Summary of Claimed Subject Matter |
| VI. | Grounds of Rejection to be Reviewed on Appeal |

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VII.	Argument
VIII.	Claims
IX.	Evidence
X.	Related Proceedings
Appendix A	Claims

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Hewlett-Packard Development Company, L.P.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 7 claims pending in application.

B. Current Status of Claims

1. Claims canceled: None
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-7
4. Claims allowed: None
5. Claims rejected: 1-7

C. Claims On Appeal

The claims on appeal are claims 1-7

IV. STATUS OF AMENDMENTS

This application is a Divisional of U.S. Patent Application Serial No. 10/080,168, which issued as U.S. Patent No. 6,672,787 on January 6, 2004.

A non-final Office Action was issued in this case on May 24, 2004, wherein the claim of priority was objected to, claim 6 was objected to for informalities, claims 1-7 were rejected under 35 U.S.C. § 102(b) as purportedly anticipated by *McIntyre*, U.S. Patent No. 4,097,012 (hereinafter *McIntyre*), and claims 1-7 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting. An Amendment was filed in response to the non-final Office Action on August 13, 2004, amending the only independent claim, claim 1. In the Amendment, the objection to the claim of priority and provisional obviousness-type double patenting rejection were overcome through arguments and the objection to claim 6 for informalities was overcome by amendment. (Claim 6 was not amended in response to the anticipation rejection citing *McIntyre*.) In answer to the anticipation rejection of claims 1-7, the Amendment presented arguments that *McIntyre* failed to teach all of the elements of independent claim 1.

A Final Office Action was issued on November 3, 2004, finally rejecting claims 1-7 under 35 U.S.C. § 102(b) as anticipated by *McIntyre*. Applicant did not file an Amendment After Final Rejection. However, Applicant filed a Notice of Appeal on January 31, 2005 and this Brief is presented in furtherance of that appeal.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Attention is respectfully directed to at least paragraphs 16-29 of the present specification and FIGURES 1-6, generally, and specifically to paragraph 27 and FIGURE 6. The present application claims a mounting system 104 for mounting a structure 102 to a support 103. The mounting system includes a plurality of rotatably positionable bracket assemblies 301, 303, with each of the bracket assemblies including a pair of "L" brackets. Each of the "L" brackets has a first leg and a perpendicular second leg (see FIGURE 6). A rigid fastener 302 removably joins together the first legs of the "L" brackets, with the second legs of the "L" brackets separated by space. Rotatable fastener 501 rotatably fastens the

second leg of one of the “L” brackets to the structure and rotatable fastener 305 rotatably fastens the second leg of the other “L” bracket to the support.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-7 stand rejected under 35 U.S.C. § 102(b) as anticipated by McIntyre, U.S. Patent No. 4,097,012 (hereinafter *McIntyre*).

VII. ARGUMENT

Rejections under 35 U.S.C. §102(b)

The recited reference does not teach all claimed limitations.

It is well settled that to anticipate a claim, the reference must teach every element of the claim, see M.P.E.P. § 2131. Moreover, in order for a reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he elements must be arranged as required by the claim,” see M.P.E.P. § 2131, citing *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Furthermore, in order for a reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim,” see M.P.E.P. § 2131, citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). Applicant respectfully asserts that the rejection does not satisfy at least these requirements.

Independent claim 1

Independent claim 1 recites “a rigid fastener for removably joining together the first legs of said “L” brackets” (emphasis added) and “rotatable fasteners for rotatably fastening the second leg of one of said “L” brackets to said structure and for rotatably fastening the second leg of the other “L” bracket to said support” (emphasis added). *McIntyre* does not disclose at least these limitations.

FIGURE 1 of *McIntyre* does not show either of the first legs (32) or the second legs (31) as removably joined together as recited by claim 1. Conversely, each of legs 32 and 31 are shown joined to other brackets. Both of first legs 32 are shown connected to the item

labeled as “B” by the Final Office Action, while both of the second legs 31 of *McIntyre* are fastened to support member 20. Thus, *McIntyre* clearly fails to show rigid fasteners joining together the first legs of “L” brackets, removably or otherwise. Particularly, *McIntyre* fails to show “a rigid fastener for removably joining together the first legs of said “L” brackets” as recited by claim 1.

FIGURE 1 of *McIntyre* also fails to show rotatably fastening one of the second legs (31) to a structure while the second leg of the other bracket is rotatably fastened to a support. Both of the first legs of *McIntyre* are secured to the single item labeled as “B” by the Final Office Action, while both of the second legs 31 of *McIntyre* are rotatably fastened to a single support, support member 20. Thus, Applicant respectfully contends that the Examiner’s recitation of *McIntyre*’s first support member 20 as the support recited in claim 1, with one upstanding leg 22 of the same support member 20 recited as the structure recited in claim 1, is misplaced. Claim 1, clearly recites that rotatable fasteners rotatably fasten the second leg of one of said “L” brackets to a structure, and that the rotatable fasteners rotatably fasten the second leg of the other “L” bracket to a support. The independent recitation of a structure mounted to a support in the preamble of claim 1 implicitly dictates that the claimed structure and the claimed support are separate elements. For at least the above reasons, *McIntyre* fails to teach “rotatable fasteners for rotatably fastening the second leg of one of said “L” brackets to said structure and for rotatably fastening the second leg of the other “L” bracket to said support.”

Similar arguments were presented in the August 13, 2004 Amendment and Applicant reasserts these arguments here. The Final Office Action responded to the arguments presented in the August 13, 2004 Amendment by stating:

The claims as currently drafted do not positively recite the various elements as being connected, and therefore do not unequivocally require a particular configuration. ... it is noted that the features upon which applicant relies (i.e., rigid fasteners removably joining together the first legs of “L” brackets) are not recited in the rejected claims.

In response, Applicant respectfully disagrees and once again points out the language of claim 1 which recites “a rigid fastener for removably joining together the first legs of said “L” brackets.” Applicant submits that the claim clearly and positively recites the very

limitation the Final Office Action complains of as being relied upon and purportedly not recited.

Furthermore, the “Response to Arguments” section of the Final Office Action does not address the second point presented above and in the August 13, 2004 Amendment. Namely, that *McIntyre* fails to show rotatably fastening one of the second legs to a structure, while the second leg of the other bracket is rotatably fastened to a support.

Applicant respectfully asserts that for at least the above- presented reasons independent claim 1 is patentable over the 35 U.S.C. § 102 rejection of record. Furthermore, there are great differences between independent claim 1 and the art of record, and a person of ordinary skill in the art considering the applied art would not find these differences obvious. Therefore, although many of the words appearing in claim 1 may be parsed from *McIntyre*, *McIntyre* fails to teach or suggest the structure or function of the elements of claim 1, as claimed.

Claims 2 through 7 each ultimately depend from base independent claim 1, and thus each of claims 2 through 7 inherits all limitations of claim 1. Therefore, for at least the reasons advanced above in responding to the rejection of claim 1, each of claims 2 through 7 sets forth features and limitations not disclosed by *McIntyre*. Thus, Applicant respectfully asserts that at least for the above reasons claims 2-7 are patentable over the 35 U.S.C. § 102 rejection of record. However, as detailed below some of the dependent claims also recite other limitations that are not taught or suggested by *McIntyre*.

Claims 2 and 3

Claim 2 recites “said rotatable fasteners comprise an assembly screw and an insert.” *McIntyre* clearly fails to teach or suggest an insert. The Final Office Action recites nut 33 of *McIntyre* as showing an insert. Applicant respectfully directs the Board’s attention to paragraph 22 of the present specification, wherein an example of an insert is described as “configured to be pressed into material such as a sheet metal piece.” Clearly, nut 33 of *McIntyre* is not an insert. Applicant respectfully submits that use of a nut, at least deployed as shown in *McIntyre*, does not teach use of an insert such as recited in claim 2.

For at least this reason Applicant respectfully asserts that claim 2 is further patentable over the 35 U.S.C. § 102 rejection of record. Furthermore, there are great differences between claim 2 and the art of record, and a person of ordinary skill in the art considering the applied art would not find these differences obvious.

Additionally, claim 3 depends from claim 2, and thus inherits all limitations of claim 2. Therefore, for at least the reason advanced above in responding to the rejection of claim 2, claims 3 sets forth features and limitations not disclosed by *McIntyre*. Thus, Applicant respectfully asserts that at least for the above reason claim 3 is also further patentable over the 35 U.S.C. § 102 rejection of record.

Claim 6

Claim 6 recites “at least one of said legs of at least one of said “L” brackets comprises at least one ear for manual positioning of said mounting system.” The Final Office Action cites legs 32 as teaching the claimed ear. The Final Office Action also cites legs 32 as teaching the “first legs” recited in claim 1. The Office Action fails to indicate what portion of leg 32 teaches the claimed ear and *McIntyre* shows no such ear. Regardless, *McIntyre* is silent as to use of legs 32 for manual positioning of its mounting bracket assembly.

For at least these reasons Applicant respectfully asserts that claim 6 is further patentable over the 35 U.S.C. § 102 rejection of record. Furthermore, there are great differences between claim 6 and the art of record, and a person of ordinary skill in the art considering the applied art would not find these differences obvious.

Claim 7

Claim 7 recites “said rigid fasteners are adapted for connecting a first bracket assembly to a second bracket assembly in at least two positions along a rotational axis.” The Final Office Action indicates support members 30 of *McIntyre* as teaching the claimed bracket assemblies and rigid fasteners A (as annotated by the Final Office Action) as teaching the limitations of claim 7. However, Applicant respectfully asserts that fasteners A of *McIntyre* do not show “connecting a first bracket assembly to a second bracket assembly.”

Rather, fasteners A connect each of the support members of *McIntyre* to bracket B (as annotated by the Final Office Action).

For at least this reason Applicant respectfully asserts that claim 7 is further patentable over the 35 U.S.C. § 102 rejection of record. Furthermore, there are great differences between claim 7 and the art of record, and a person of ordinary skill in the art considering the applied art would not find these differences obvious.

Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in condition for immediate allowance. Accordingly, the Board is respectfully solicited to indicate that the claims are allowed, and to remand the present application for action in accordance with such a finding.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

IX. EVIDENCE

No evidence, pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the Examiner is being submitted.

X. RELATED PROCEEDINGS

No related proceedings are referenced in II. above, or copies of decisions in related proceedings are not provided, hence no Appendix is included.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV482738710US, in an envelope addressed to: MS Appeal Brief- Patents, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Date of Deposit: April 1, 2005

Typed Name: Susan Bloomfield

Signature: *Susan Bloomfield*

Respectfully submitted,

By *Jerry L. Mahurin*

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APPENDIX A

Claims Involved in the Appeal of Application Serial No. 10/080,168

1. (Previously Presented) A mounting system for mounting a structure to a support, comprising:

a plurality of rotatably positionable bracket assemblies, each of said bracket assemblies including a pair of “L” brackets, each of the “L” brackets having a first leg and a perpendicular second leg;

a rigid fastener for removably joining together the first legs of said “L” brackets, wherein the second legs of said “L” brackets are separated by space; and

rotatable fasteners for rotatably fastening the second leg of one of said “L” brackets to said structure and for rotatably fastening the second leg of the other “L” bracket to said support.

2. (Original) The mounting system of claim 1 wherein said rotatable fasteners comprise an assembly screw and an insert.

3. (Original) The mounting system of claim 2 wherein said insert is a threaded insert and said assembly screw screws into said threaded insert.

4. (Original) The mounting system of claim 1 wherein said rigid fasteners comprise machine screws.

5. (Original) The mounting system of claim 1 wherein said bracket assemblies have a common axis of rotation.

6. (Previously Presented) The mounting system of claim 1 wherein at least one of said legs of at least one of said “L” brackets comprises at least one ear for manual positioning of said mounting system.

7. (Original) The mounting system of claim 1 wherein said rigid fasteners are adapted for connecting a first bracket assembly to a second bracket assembly in at least two positions along a rotational axis.